evidence that her aunt was driving slowly and that they were not in a hurry.

In our judgment, the trial judge was perfectly entitled on the evidence as a whole, to come to the view that the deceased was not driving at an excessive speed and that she was not guilty of contributory negligence.

Mr Teo next contends that the judge erred in taking into account the deceased's prospect of promotion when assessing lost years. Mr Teo argues that as promotion depended on good performance and vacancy it could not be said there was a probability that she would be promoted. *Young* v *Percival*[1] was cited, wherein Megaw LJ (at p 681) in assessing the deceased's future prospects, alluded to 'a probability, though by no means a certainty', that if the deceased had lived, he would by the date of the trial had been advanced to the post of a general sales manager.

Our attention was directed to certain passages in the evidence of the administrative officer at the Ministry of Education, Pg Sabli (PW8), and that of the principal of the school in which the deceased was a teacher, Pg Zainal (PW11).

Pg Sabli's evidence was that depending on good performance and vacancies it was 'most likely' for the deceased to become senior education officer in three to five years, though it was not possible to be certain about her prospects. He also added that Brunei was very short of education officers and senior education officers, especially of locals.

The deceased's principal, Pg Zainal, said in evidence that whilst it was difficult to assess her performance because she was a new officer, he was able to say that given time he was sure she would perform very well. He continued:

> I think that in five years' time she would not have found difficulty in becoming senior education officer. She had the ability required. If there was vacancy, five years after confirmation as education officer there was vacancy as senior education officer, I wouldn't hesitate to say, from what I have seen, that she could do it.

Then, inspite of this assessment, he, curiously, estimated her prospects as '50/50 chance'. Finally he said that only two local officers had not been promoted after seven years as education officers.

It seems clear to us, on the evidence, her chances of promotion were very good indeed. Having regard both to vacancies and performance, there was every prospect that she would become a senior education officer, if not five years after confirmation, then some time after that. We find no cause to criticize the judge's conclusion that 'she had a more or less even chance of being appointed a senior education officer five years from then', and 'if she was not so appointed then, she would probably have been so appointed some time after that'. This limb of the appeal therefore fails.

Lastly, Mr Teo submits that the judge was wrong in adopting as the multiplicand a free balance amounting to two-thirds of the probable net earnings, which was manifestly excessive. Mr Teo suggests a free balance of 40% in this case. Taking into consideration (as the judge has done) that the deceased was a middle-ranking government servant, rather simple in her tastes and frugal in her habits, and in the context of life in Brunei, we cannot say the judge was wrong in his assessment.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Ibrahim, Chee, Teo, Law & Co; Sandhue & Co.*

Reported by *Kevin Mathews*

Hamidah bte Abd Hamid & Anor v Polynesia Offshore Supplies (B) Bhd

COURT OF APPEAL (BRUNEI) — CIVIL APPEAL NOS 1 AND 2 OF 1990
TI LIANG YANG P, FUAD AND MAYO COMMISSIONERS
26 MAY 1990

Bankruptcy — Adjudication and receiving orders — Setting aside — Whether indorsement on notice was defective — Whether irregularity curable — Bankruptcy Ordinance, s 124 — Bankruptcy Rules, r 45(3)

This is an appeal on the grounds, inter alia, that the indorsement on the bankruptcy notice was defective. The time given for making an application to set aside the notice was seven days which was the same period given in the body of the notice for compliance with the terms of the notice failing which an act of bankruptcy would have been committed. According to r 45(3) of the Bankruptcy Rules, the period is three days. The respondent invited the court to invoke the provisions contained in s 124 of the Bankruptcy Ordinance on the ground that no prejudice had in fact been occasioned by the irregularity and that it was clear from the appellant's affidavit that she did not have any grounds to enable an application to set the notice aside to have any prospect of success.

Held, allowing the debtors' appeal:

It is clear that bankruptcy proceedings are of quasi-penal nature and it is imperative that the procedural requirements are strictly complied with. The indorsement was so defective as to amount to an irregularity which cannot be cured by the provisions contained in s 124.

Legislation referred to
Bankruptcy Ordinance s 124
Bankruptcy Rules r 45(3)

David Young for the appellant.
Jimmy Wee for the respondent.

Cur Adv Vult

Mayo Commissioner (delivering the judgment of the court): This is an appeal against the judgment of Mr Commissioner Wong dated 4 April 1990. We propose adopting a similar approach to that adopted by the Commissioner of dealing with the two cases together as the issues arising out of them are almost in all respects identical and the parties agreed to this course. It seems to us that the most substantial ground of appeal is the complaint that the indorsement on the bankruptcy notice was defective. This is ground four of the appeal and reads as follows:

> That in considering r 45(3) of the Bankruptcy Rules (which provides that in the case of bankruptcy notices served in Brunei the indorsement shall specify a period of three (3) days for filing an affidavit) the learned judge wrongly decided that seven (7) days was the correct period (that being the period specified under s 3(1)(g) for determining the questions raised in the affidavit) and that having so decided the learned judge thus failed to address the question of whether a notice incorrectly indorsed was capable of misleading the judgment debtor or whether or not it was in the prescribed form.

It is evident from the indorsement on the bankruptcy notices in both cases that the time given for making an application to set aside the notice on the ground that the debtor had a set-off or counterclaim in a sum equal or exceeding to the judgment debt was seven days, namely, the same period as the period referred to in the body of the notice for compliance with the terms of the notice failing which an act of bankruptcy would have been committed.

The consequence of this irregularity is quite serious. If the debtor waited for seven days before making the application to set aside the notice the act of bankruptcy would already have occurred. Mr Wee for the judgment creditor invited us, as he did Mr Commissioner Wong, to invoke the provisions contained in s 124 of the Ordinance on the ground that no prejudice had in fact been occasioned by the irregularity and that it was clear from the debtor's affidavit which was subsequently filed that she did not have any set-off or counterclaim sufficient to enable an application to set the notice aside to have any prospect of success.

With respect, we do not consider that this would be a proper exercise of any discretion deposed in the court under s 124. It is clear that bankruptcy proceedings are of a quasi-penal nature and it is imperative that the procedural requirements are strictly complied with. We are of the view that the indorsement on the notice was so defective as to amount to an irregularity which cannot be cured by the provisions contained in s 124.

For this reason, the decision of Mr Commissioner Wong must be set aside. This disposes of the appeal and we do not propose commenting upon the other grounds. These appeals accordingly succeed and we will hear the parties on costs.

Appeals allowed.

Solicitors: *Bonds; Joseph Hoo, Morris & Lal.*

Reported by *Kevin Mathews*

International Bank of Brunei Bhd v Hock Hin Trading Co

COURT OF APPEAL (BRUNEI) — CIVIL APPEAL NO 3 OF 1990
TI LIANG YANG P, FUAD AND MAYO COMMISSIONERS
24 MAY 1990

Civil Procedure — Appeal — Preliminary objection — Leave to appeal — Failure of appellant to apply — Effect of — Brunei Preliminary Rule 2(2) — Supreme Court Rules, O 45 & O 55.1(1) — Rules of the Supreme Court [UK], O 59 r 1

In this appeal, the respondent raised a preliminary objection on grounds that, inter alia, the appellant had failed to apply for leave of the learned judge below to appeal when leave of the judge was necessary.

Held, dismissing the preliminary objection:

(1) The requirement for obtaining leave is clearly contemplated in the Brunei Supreme Court Rules. The failure to set out the different cases where leave is required amounts to a shortcoming or lacuna of the type for which Brunei Preliminary Rule 2(2) is designed, ie reference is made to *The Supreme Court Practice.*

(2) The failure to obtain leave is only a procedural irregularity and it is open to the court to enlarge the time for the appellant to seek leave to prosecute the appeal.

Cases referred to

1 *Brunei Transporting Co* v *Wong Ba Jun* (Suit No 134/88) (unreported) (folld)
2 *Hamzah bin Abdul Majid & Anor* v *Sungei Way Leasing Sdn Bhd* [1986] 1 MLJ 471 (not folld)

Legislation referred to

Brunei Preliminary Rule 2(2)
Supreme Court Rules O 45, O 55.1(1)
Rules of the Supreme Court [UK] O 59 r 1

Aishah Alkaff (Mrs) for the appellant.
Irene Appaduray (Mrs) for the respondent.

Cur Adv Vult

Mayo Commissioner (delivering the judgment of the court): The respondent is moving this court for an order